

## **PART 9405—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT**

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### **§ 9405.1 Purpose and scope.**

The regulations in this part implement the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, with respect to the availability of records for inspection and copying.

### **§ 9405.2 Definitions.**

As used in this part, the term—

*Chief FOIA Officer* means the person designated under § 9405.3(d) who has Commission-wide responsibility for the efficient and appropriate compliance with the FOIA.

*Commercial use request* means a FOIA request from or on behalf of a person who seeks information for a use or purpose that furthers his/her commercial, trade, or profit interests, which can include furthering those interests through litigation. The FOIA Officer will determine, whenever reasonably possible, the use to which a requester will put the requested documents. Where the FOIA Officer has reasonable cause to doubt the use for which the requester claims to have made the FOIA request or where that use is not clear from the FOIA request itself, the FOIA Officer will seek additional clarification before assigning the request to a specific category.

*Commission* means the U.S. Election Assistance Commission, established by

the Help America Vote Act of 2002, 42 U.S.C. 15301 *et seq.*

*Commissioner* means an individual appointed to the Commission by the President and confirmed by the Senate under section 203 of the Help America Vote Act of 2002, 42 U.S.C. 15323.

*Direct costs* means those expenditures which the Commission actually incurs in searching for, duplicating, and, in the case of commercial use requesters, reviewing documents to respond to a FOIA request. Direct costs include, but are not limited to, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that basic rate to cover benefits) and the cost of operating duplicating equipment. Direct costs do not include overhead expenses, such as the cost of space and heating or lighting the facility in which the records are stored.

*Duplication* means the process of making a copy of a document necessary to respond to a FOIA request. Examples of the form such copies can take include, but are not limited to, paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape, DVD, or CD). The Commission will honor a requester's specified preference of form or format of disclosure if the records requested are reasonably reproducible with reasonable efforts in the requested form or format.

*Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institute of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

*Executive Director* means the Executive Director of the Commission or his or her designee.

*FOIA* means Freedom of Information Act, 5 U.S.C. 552, as amended.

*FOIA Officer* means a person designated by the Chief FOIA Officer under § 9405.3(d) to carry out day-to-day implementation of the FOIA activities of the Commission.

*FOIA Public Liaison* means a person designated by the Chief FOIA Officer

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under § 9405.3(d) to assist in the resolution of any disputes between the requester and the Commission.

*FOIA request* means to seek the release of records under 5 U.S.C. 552, as amended.

*General Counsel* means the General Counsel of the Commission or his or her designee.

*Non-commercial scientific institution* means an organization that is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

*Record* means any information that would be a Commission record subject to the requirements of this part when maintained by the Commission in any format, including, but not limited to, an electronic format. Record includes information that is maintained for the Commission by an entity under Government contract for the purposes of records management.

*Representative of the news media* means any person or entity that gathers information of potential interest to a segment of the public, uses editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. As used in this paragraph, “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, web logs, and publishers of periodicals (but only in those instances in which these entities can qualify as disseminators of news, as defined in this paragraph) who make their products available for purchase or subscription by the general public. As used in this paragraph, a “web log” means a publicly available Web site, usually maintained by an individual, with regular entries of commentary, descriptions of events, or other material. A freelance journalist may be regarded as working for a news media entity and therefore, considered a representative of the news media if that person can demonstrate a solid basis for expecting publication by a news organization (whether or not the jour-

nalist is actually employed by the entity). A publication contract would present a solid basis for such an expectation. The Commission may also consider the past publication record of the requester in making this determination.

*Requester* is any person who submits a FOIA request to the Commission for release of a record under 5 U.S.C. 552, as amended.

*Review* means the process of examining a document located in response to a commercial use request to determine whether any portion of the document located is exempt from disclosure. Review also refers to processing any document for disclosure, *i.e.*, doing all that is necessary to excise exempt portions of the document or otherwise prepare the document for release. Review time includes time spent considering any formal objection to disclosure made by a business submitter requesting confidential treatment but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

*Search* means all time spent reviewing, manually or by automated means, Commission records for the purpose of locating those records that are responsive to a FOIA request, including, but not limited to, page-by-page or line-by-line identification of material within documents and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Search time does not include review of material to determine whether the material is exempt from disclosure.

#### § 9405.3 Policy on disclosure of records.

(a) The Commission will make the fullest possible disclosure of records to the public, consistent with the rights of individuals to privacy, the rights of individuals and other entities with respect to trade secrets and commercial or financial information entitled to privileged and confidential treatment, and the need for the Commission to promote free internal policy deliberations and to pursue its official activities without undue disruption.

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(b) All Commission records shall be available to the public unless they are specifically exempt under this part.

(c) In the interest of efficiency and economy, the Commission's preference is to furnish records to requesters in electronic format, when possible.

(d) To carry out this policy, the Commission shall designate a Chief Freedom of Information Act Officer (Chief FOIA Officer). The Chief FOIA Officer shall designate one or more Commission officials, as appropriate, as FOIA Public Liaison and/or as FOIA Officers. A FOIA Public Liaison shall serve as a supervisory official to whom a FOIA requester can raise questions about the service the FOIA requester has received. A FOIA Officer shall have the authority, subject to the direction and supervision of the Chief FOIA Officer, the requirements of this part, and the FOIA, to make decisions concerning disclosure of records to the public.

### § 9405.4 Availability of records.

(a) The FOIA and its provisions apply only to existing Commission records; the FOIA does not require the creation of new records.

(b) In accordance with 5 U.S.C. 552(a)(2), the Commission shall make the following materials available for public inspection and copying:

(1) Statements of policy and interpretation that have been adopted by the Commission but have not been published in the FEDERAL REGISTER;

(2) Administrative staff manuals and instructions to staff that affect a member of the public;

(3) Copies of all records, regardless of form or format, that have been released to any person under this paragraph and that, because of their nature or subject matter, the Commission determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

(4) A general index of the records referred to in paragraph (b)(3) of this section.

(c) In accordance with 5 U.S.C. 552(a)(3), the Commission shall make available, upon proper request, all non-exempt Commission records, or portions of records, not previously made

public under 5 U.S.C. 552(a)(1) and (a)(2).

(d) The Commission shall maintain and make available current indexes and supplements providing identifying information regarding any matter issued, adopted, or promulgated after July 4, 1967. These indexes and supplements shall be published and made available on at least a quarterly basis for public distribution unless the Commission determines by Notice in the FEDERAL REGISTER that publication would be unnecessary, impracticable, or not feasible due to budgetary considerations. Nevertheless, copies of any index or supplement shall be made available upon request at a cost not to exceed the direct cost of duplication.

(e) If documents or files contain both disclosable and non-disclosable information, the non-disclosable information will be deleted and the disclosable information released, unless the disclosable portions cannot be reasonably segregated from the other portions in a manner which will allow meaningful information to be disclosed.

(f) All records created in the process of implementing provisions of 5 U.S.C. 552 will be maintained by the Commission in accordance with the authority granted by the National Archives and Records Service of the General Services Administration.

(g) The Commission encourages the public to explore the information available on the Commission's Web site, located at <http://www.eac.gov>.

### § 9405.5 Categories of exemptions.

(a) No FOIA requests under 5 U.S.C. 552 shall be denied release unless the record contains, or its disclosure would reveal, matters that are:

(1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are, in fact, properly classified under such Executive Order;

(2) Related solely to the internal personnel rules and practices of the Commission;

(3) Specifically exempted from disclosure by statute, provided that such statute:

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(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person that are privileged or confidential. Such information includes confidential business information which concerns or relates to the trade secrets, processes, operations, style of works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount of source of income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, if the disclosure is likely to have the effect of either impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions or causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such information. For purposes of this section, trade secret means a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort. Examples of trade secrets may include, but are not limited to, plans, schematics, specifications of materials used in production, source code used to develop software, technical descriptions of manufacturing process, quality control methodology, and test results. The following procedures shall be used for submitting business information in confidence:

(i) Clearly mark any portion of any data or information being submitted that in the submitter's opinion is a trade secret or commercial and financial information that the submitter is claiming should be treated as privileged and confidential and submit such data or information separately from other material being submitted to the Commission;

(ii) A request for confidential treatment shall be addressed to the Chief FOIA Officer, U.S. Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005 and shall indicate clearly on the envelope that it is a request for confidential treatment.

(iii) With each submission of, or offer to submit, business information which a submitter desires to be treated as confidential under paragraph (a)(4) of this section, the submitter shall provide the following, which may be disclosed to the public:

(A) A written description of the nature of the subject information and a justification for the request for its confidential treatment, and

(B) A certification in writing under oath that substantially identical information is not available to the public.

(iv) Approval or denial of requests shall be made only by the Chief FOIA Officer or his or her designees. A denial shall be in writing, shall specify the reason for the denial, and shall advise the submitter of the right to appeal to the Commission.

(v) For good cause shown, the Commission may grant an appeal from a denial by the Chief FOIA Officer or his or her designee if the appeal is filed within 15 days after receipt of the denial. An appeal shall be addressed to the Chief FOIA Officer, U.S. Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005 and shall clearly indicate that it is a confidential submission appeal. An appeal will be decided within 20 days after its receipt (excluding Saturdays, Sundays, and legal holidays) unless an extension, stated in writing with the reasons therefore, has been provided to the person making the appeal.

(vi) Any business information submitted in confidence and determined to be entitled to confidential treatment shall be maintained in confidence by the Commission and not disclosed except as required by law. In the event that any business information submitted to the Commission is not entitled to confidential treatment, the submitter will be permitted to withdraw the tender unless it is the subject of a

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request under the FOIA or of judicial discovery proceedings.

(5) Interagency or intra-agency memoranda or letters that would not be available by law to a party in litigation with the Commission;

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution that furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(b) Any portion of a record that reasonably can be segregated from the balance of the record shall be provided to any individual requesting such record after deletion of the portions which are exempt. The amount of information deleted and the exemption under which the deletion is made shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by an ex-

emption in paragraph (a) of this section under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made.

(c) If a requested record is one of another government agency or deals with subject matter to which a government agency other than the Commission has exclusive or primary responsibility, the request for such a record shall be promptly referred by the Commission to that agency for disposition or guidance as to disposition.

(d) Nothing in this part authorizes withholding of information or limiting the availability of records to the public, except as specifically provided; nor is this part authority to withhold information from Congress.

[73 FR 54257, Sept. 18, 2008, as amended at 75 FR 49814, Aug. 16, 2010]

### § 9405.6 Discretionary release of exempt records.

The Commission may, in its discretion, release requested records despite the applicability of the exemptions in § 9405.5, if it determines that it is in the public interest and that the rights of third parties would not be prejudiced. The Executive Director will have the authority to determine that requested records may be released despite otherwise applicable exemptions.

### § 9405.7 Requests for records.

(a) Requests for copies of Commission records under the FOIA shall be made in writing and addressed to the Chief FOIA Officer, U.S. Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005. The request shall reasonably describe the records sought with sufficient specificity with respect to names, dates, and subject matter to permit the records to be located. A requester will be promptly advised if the records cannot be located on the basis of the description given and that further identifying information must be provided before the request can be satisfied.

(b) Requests for Commission records and copies thereof shall specify the preferred form or format (including electronic formats) of the response. The Commission shall accommodate

requesters as to form or format if the record is readily available in that form or format. When requesters do not specify the form or format of the response, the Commission shall respond in the form or format in which the document is most accessible to the Commission. In the interest of efficiency and economy, the Commission's preference is to furnish records to requesters in electronic format, whenever possible.

(c) The Commission shall determine within 20 working days after receipt of a request, or 20 working days after an appeal is granted, whether to comply with such request, unless in unusual circumstances the time is extended. The 20-day period shall commence on the date on which the request was first received by the appropriate component of the Commission, but in any event, not later than 10 days after the request is first received by the component of the Commission designated to receive requests under this part. The 20-day period shall not be tolled by the Commission except—

(1) The Commission may make one request of the requester for information and toll the 20-day period while it is awaiting such information that it has reasonably requested from the requester.

(2) If it is necessary to clarify with the requester issues regarding fee assessment.

(3) Under paragraphs (c)(1) or (2) of this section, the Commission's receipt of the requester's response to the Commission's request for information or clarification ends the tolling period.

(d) In the event the time is extended under paragraph (c) of this section, the requester shall be notified of the reasons for the extension and the date on which a determination is expected to be made. An extension may be made if it is—

(1) Necessary to locate records or transfer them from physically separate facilities; or

(2) Necessary to search for, collect, and appropriately examine a large quantity of separate and distinct records that are the subject of a single request; or

(3) Necessary for consultation with another agency that has a substantial

interest in the determination of the request.

(e) If the Commission determines that an extension of time is necessary to respond to a request satisfying the unusual circumstances specified in paragraph (c) of this section, the Commission shall so notify the requester and give the requester an opportunity to limit the scope of the request so that it may be processed within the time limit prescribed in paragraph (c) of this section or arrange with the Commission an alternative time frame for processing the request or a modified request.

(f) The Commission may aggregate and process as a single request requests by the same requester, or a group of requesters acting in concert, if the Commission reasonably believes that the requests actually constitute a single request that would otherwise satisfy the unusual circumstances specified in paragraph (c) of this section, and the requests involve clearly related matters.

(g) The Commission will process requests under the FOIA based on the order they are received.

(h) The Commission shall consider requests for the expedited processing of requests in cases where the requester demonstrates a compelling need for such processing.

(1) The term “compelling need” means, with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal government activity.

(2) Requesters for expedited processing must include in their requests a statement setting forth the basis for the claim that a “compelling need” exists for the requested information, certified by the requester to be true and correct to the best of his or her knowledge and belief.

(3) The Commission shall determine whether to grant a request for expedited processing and notify the requester of such determination within 10 days of receipt of the request. Denials of requests for expedited processing may be appealed as set forth in § 9405.8. The Commission shall expeditiously determine any such appeal. As soon as practicable, the Commission shall

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process the documents responsive to a request for which expedited processing is granted.

(i) Any person denied access to records by the Commission shall be notified immediately of the denial, including the reasons for the decision and notified of his or her right to appeal the adverse determination to the Commission.

(j) The date of receipt of a request under this part shall be the date on which the Chief FOIA Officer actually receives the request.

(k) Each request received by the Chief FOIA Officer will be assigned an individualized tracking number. Requesters may call (866) 747-1471 and, using the tracking number, obtain information about the request, including the date on which the Commission originally received the request and an estimated date on which the Commission will complete action on the request.

[73 FR 54257, Sept. 18, 2008, as amended at 75 FR 49814, Aug. 16, 2010]

### § 9405.8 Appeals of denials of requests for records.

(a) Any person who has been notified under § 9405.7(i) that his/her request for inspection of a record or for a copy of a record has been denied, or who has received no response within 20 working days (or within such extended period as is permitted under § 9405.7(d)) after the request has been received by the Commission, or who has received no response within 20 days after a request for expedited processing has been received by the Commission, may appeal the adverse determination or the failure to respond by requesting the Commission to direct that the record be made available or that the expedited processing shall occur.

(b) The appeal request shall be in writing, shall clearly and prominently state on the envelope or other cover and at the top of the first page "FOIA Appeal," and shall identify the record in the form in which it was originally requested.

(c) The appeal request should be delivered or addressed to the Chief FOIA Officer, U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005.

(d) The requester may state facts and cite legal or other authorities as he or she deems appropriate in support of the appeal request.

(e) The Commission will make a determination with respect to any appeal within 20 working days after receipt of the appeal (or within such extended period as is permitted under § 9405.7). If, on appeal, the denial of the request for a record or a copy is in whole or in part upheld, the Commission shall advise the requester of the denial and shall notify him or her of the provisions for judicial review of that determination as set forth in 5 U.S.C. 552(a)(4).

(f) Because of the risk of misunderstanding inherent in oral communications, the Commission will not entertain any appeal from an alleged denial or failure to comply with an oral request. Any person who has orally requested a copy of a record that he or she believes to have been improperly denied should resubmit the request in writing as set forth in § 9405.7.

### § 9405.9 Fees in general.

(a) *Generally.* The Commission will charge fees that recoup the full allowable direct costs it incurs. The Commission will use the most efficient and least costly means to comply with requests for documentation.

(b) *Manual searches for records.* The Commission will charge fees at the salary rate(s) (basic pay plus 16 percent) of the employee(s) making the search.

(c) *Computer searches for records.* The Commission will charge the actual direct cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search.

(d) *Review of records.* Only requesters who are seeking documents for commercial use may be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review (*i.e.*, the review undertaken the first time the Commission analyzes the applicability of a specific exemption to a particular record or portion of a record). Records or portions of records withheld

in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review are assessable. The Commission will charge at the salary rate(s) (basic pay plus 16 percent) of the employee(s) reviewing records.

(e) *Duplication of records.* Records will be duplicated at a rate of fifteen (15) cents per page. For copies prepared by computers, such as tapes, CDs, DVDs, or printouts, the Commission shall charge the actual cost, including operator time, of production. For other methods of reproduction or duplication, the Commission will charge the actual direct costs of producing the document(s). If the Commission estimates that duplication charges are likely to exceed \$25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(f) *Other charges.* The Commission will recover the full costs of providing services such as those enumerated below when it provides them in response to a direct request for such services:

(1) Certifying that records are true copies; or

(2) Sending records by special methods such as express mail.

(g) *Payment of fees.* Remittance shall be in the form either of a personal check or bank draft drawn on a bank in the United States or a postal money order. Remittance shall be made payable to the order of the Treasury of the United States and mailed to the Chief FOIA Officer, U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005.

(h) *Receipt of fees.* A receipt for fees paid will be given upon request. Refund of fees paid for services actually rendered will not be made.

(i) *Restrictions on assessing fees.* The Commission shall not assess search fees or duplication fees under this paragraph if the Commission fails to com-

ply with any time limit in these regulations. The Commission will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. With the exception of requesters seeking documents for a commercial use, the Commission will not charge fees for the first 100 pages of duplication and the first two hours of search time.

(1) The elements to be considered in determining the “cost of collecting a fee” are the administrative costs of receiving and recording a requester’s remittance and processing the fee for deposit in the Treasury Department’s special account.

(2) For purposes of these restrictions on assessment of fees, the word “pages” means paper copies of 8.5” x 11” or 11” x 14.” Thus, requesters are not entitled to 100 computer disks, for example.

(3) For purposes of these restrictions on assessment of fees, the term “search time” means manual search. To apply this term to searches made by computer, the Commission will determine the hourly cost of operating the CPU and the operator’s hourly salary plus 16 percent. When the cost of such search (including operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of salary of the person performing the search (*i.e.*, the operator), the Commission will begin assessing charges for computer search.

#### § 9405.10 Fees to be charged—categories of requesters.

There are four categories of FOIA requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters.

(a) *Commercial use requesters.* When the Commission receives a request for documents for commercial use, it will assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the record sought. Commercial use requesters are neither entitled to two hours of free search time nor 100 free pages of duplication. The Commission may recover the cost of searching for and reviewing



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records even if there is ultimately no disclosure of records (see § 9405.11(b)).

(b) *Educational and non-commercial scientific institution requesters.* The Commission shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the record is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought in the furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(c) *Representatives of the news media.* The Commission shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, the requester must fit the definition of a representative of the news media as stated in § 9405.2, and the request must not be made for commercial use. For purposes of this paragraph, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for commercial use.

(d) *All other requesters.* The Commission shall charge requesters who do not fit into any of the categories above fees that recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge.

### § 9405.11 Miscellaneous fee provisions.

(a) *Charging Interest—notice and rate.* The Commission may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. The fact that the fee has been received by the Commission within the 30-day grace period, even if it is not processed, will suffice to stay the accrual of interest. Interest will be at the rate prescribed in section 3717 of title 31 of the United States Code and will accrue from the date of the billing.

(b) *Charges for unsuccessful search.* The Commission may assess charges for time spent searching, even if it fails to locate the records or if the records located are determined to be exempt from disclosure. If the Commission estimates that search charges are likely to exceed \$25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(c) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Commission reasonably believes that a requester or a group of requestors acting in concert has submitted requests that constitute a single request involving clearly related matters, the Commission may aggregate those requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period over which the requests have occurred.

(d) *Advance payments.* The Commission may not require a requester to make an advance payment (*i.e.*, payment before work is commenced or continued on a request) unless:

(1) The Commission estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250. Then, the Commission will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing). Then, the Commission may require the requester to:

(i) Pay the full amount owed plus any applicable interest as provided above

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or demonstrate that he or she has, in fact, paid the fee, and

(ii) Make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(3) When the Commission acts under paragraphs (d)(1) or (2) of this section, the administrative time limits prescribed in 5 U.S.C. 552(a)(6) will begin only after the Commission has received payments described in paragraphs (d)(1) and (2) of this section.

(e) *Effect of Debt Collection Act of 1982.* The Commission shall comply with the provisions of the Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage repayment.

## § 9405.12 Waiver or reduction of charges.

Records responsive to a request will be furnished without charge when the Chief FOIA Officer determines, based on all available information, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

## PART 9407—IMPLEMENTATION OF THE GOVERNMENT IN THE SUNSHINE ACT

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- 9407.5 Closed meetings.
- 9407.6 Procedures for closing meetings.
- 9407.7 Recordkeeping requirements.
- 9407.8 Public availability of records.

AUTHORITY: 5 U.S.C. 552b.

SOURCE: 73 FR 54257, Sept. 18, 2008, unless otherwise noted.

### § 9407.1 Purpose and scope.

This part contains the regulations of the U.S. Election Assistance Commission implementing the Government in the Sunshine Act (5 U.S.C. 552b). Consistent with the Act, it is the policy of

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the Commission that the public is entitled to the fullest practicable information regarding its decision making processes. This part sets forth the basic responsibilities of the Commission with regard to this policy and offers guidance to members of the public who wish to exercise the rights established by the Act. These regulations also fulfill the requirement of 5 U.S.C. 552b(g) that each agency subject to the Act promulgates regulations to implement the open meeting requirements of paragraphs (b) through (f) of section 552b.

### § 9407.2 Definitions.

As used in this part, the term—

*Commission* means the U.S. Election Assistance Commission, established by the Help America Vote Act of 2002, 42 U.S.C. 15301 *et seq.*

*Commissioner* means an individual appointed to the Commission by the President and confirmed by the Senate under section 203 of the Help America Vote Act of 2002, 42 U.S.C. 15323.

*Executive Director* means the Executive Director of the Commission or his or her designee.

*General Counsel* means the General Counsel of the Commission or his or her designee.

*Meeting* means the deliberations of at least three Commissioners where such deliberations determine or result in the joint conduct or disposition of official Commission business. A deliberation conducted through telephone or similar communications equipment in which all persons participating can hear each other shall be considered a meeting. For the purposes of this section, “joint conduct” does not include situations where the requisite number of members is physically present in one place but not conducting agency business as a body. In addition, the term “meeting” does not include a process of notation voting by circulated memorandum for the purpose of expediting consideration of official Commission business. The term “meeting” also does not include deliberations on whether to:

(1) Schedule a meeting;

(2) Hold a meeting with less than seven days notice, as provided in § 9407.4(e);